IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF ARIZONA
MINUTES

(Filed Mar. 24, 1992)

BANKRUPTCY JUDGE: ROBERT G. MOOREMAN
CLERK: LU ANN BELLER
COURT REPORTER: MONICA TURNER
NO./ADV.NO.: 90-4918-PHX-RGM

NAME: AMBANC LA MESA LTD PARTNERSHIP CH 11

SUBJECT OF HEARING: 1. CONTINUED HEARING ON MOTION FOR APPROVAL OF APPLICATION FOR ALLOWANCE & PAYMENT OF ATTORNEYS FEES FOR COUNSEL FOR APPELLEE FEES $9048.50 & COSTS $ -0- 2. EVIDENTIARY HEARING ON CONFIRMATION OF PLAN

DATE/TIME: MARCH 24, 1992, 2:00 PM, HEARING ROOM 1

APPEARANCES:

ATTY RTC: SEAN O'BRIEN
ATTY DEBTOR: ILENE LASHINSKY/EDWARD DAVIS

PROCEEDINGS:

RTC'S EXHIBIT K was marked for identification. EXHIBITS E, F, G, and H were admitted into evidence.

DEBTOR'S EXHIBIT 17 was marked for identification.

THOMAS PATRICK KEIG was sworn and examined by Mr. O'Brien. Ms. Lashinsky crosses. Mr. O'Brien re-directs and Ms. Lashinsky re-crosses.

ELLIOTT DAVID POLLACK was sworn and examined by Ms. Lashinsky as a rebuttal witness. Mr. O'Brien responded.

COURT: IT IS ORDERED TAKING THIS MATTER UNDER ADVISEMENT.

IT IS FURTHER ORDERED DIRECTING MR. O'BRIEN TO FILE AN ANSWER TO THE RESPONSE REGARDING THE APPEAL ON THE APPLICATION FOR FEES NOT LATER THAN TUESDAY, MARCH 31, 1992.

AMBANC LA MESA 90-4918

UNDER ADVISEMENT RULING

THE COURT HAVING HAD UNDER ADVISEMENT THE MATTER OF CONFIRMATION OF THE DEBTOR'S PENDING PLAN OF REORGANIZATION AND AFTER TRIAL THEREON, AND AFTER DUE CONSIDERATION OF ALL MATTERS PRESENTED THEREON INCLUDING ALL PLEADING THEREON, THE EVIDENCE, TESTIMONY AND EXHIBITS AS WELL AS MEMOS AND ORAL ARGUMENTS ALL UNDER THE PRESENT POSTURE OF THE CASE, THE COURT FINDS AND CONCLUDES THAT THE DEBTOR HAS MET ALL THE REQUIREMENTS FOR CONFIRMATION OF THE PLAN UNDER THE BANKRUPTCY CODE AND THAT THE PENDING PLAN SHALL BE CONFIRMED. IT IS THEREFORE ORDERED CONFIRMING THE PENDING PLAN IN ALL RESPECTS INCLUDING BUT NOT LIMITED TO THE PLAN'S INTEREST RATE OF 10.5% WHICH THE COURT ADOPTS HEREIN AND THE VALUATION OF THE $4.3 MILLION SUBJECT APARTMENT PROJECT. IT IS THEREFORE ORDERED CONFIRMING THE PLAN AND DIRECTING THE DEBTOR TO LODGE A SEPARATE CONFIRMATION ORDER CONSISTENT HEREWITH, FORTHWITH, WHICH WHEN SIGNED, FILED

AND DOCKETED SHALL BE THE FINAL APPEALABLE ORDER HEREIN.

/s/ Robert G. Mooreman
Robert G. Mooreman
Chief U.S. Bankruptcy Judge

Copies of the foregoing mailed March 25, 1992 to:

Ilene Lashinsky/Edward Davis, Atty Debtor
Sean O'Brien, Atty RTC
U.S. Trustee

By: Jeanie Frederickson
Deputy Clerk

DAVIS & LOWE, P.C.
LAWYERS

234 N. CENTRAL AVENUE
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Edward E. Davis, #000985
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Attorneys for Debtor

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF ARIZONA

In re AMBANC LA MESA LIMITED PARTNERSHIP, an Arizona Limited Partnership, Debtor.	Chapter 11 Proceeding Case No. B-90-4918 PHX RGM **DEBTOR'S MOTION FOR VALUATION OF SECURITY**

Ambanc La Mesa Limited Partnership, an Arizona limited partnership (the "Debtor"), by and through undersigned counsel, respectfully moves this Court pursuant to 11 U.S.C. §506 and Bankruptcy Rule 3012 to determine the value of the security held by Western Savings and Loan Association now the Resolution Trust Corporation ("Western" or "RTC"). The security at issue consists of certain improved real property with the legal description attached hereto as Exhibit "A" and incorporated herein by this reference. Said real property consists

of a 156-unit apartment project known as "La Mesa Village Apartments" located in Mesa, Maricopa County, Arizona at 655 South Mesa Drive.

In support of its Motion, the Debtor alleges and states:

1. Western Savings and Loan Association filed a Motion for Relief from the Automatic Stay on June 18, 1990. Pursuant to said Motion, it has sought relief from the automatic stay with respect to the above-described real property known hereafter as "La Mesa Village Apartments".

2. The RTC through its Motion, Western has asserted certain claims that are allegedly secured by a lien on the subject real property in which this estate has an interest.

3. Debtor contends that the value of the real property equals $4,300,000.00 and that any indebtedness of the Debtor to Western should be determined by this Court to be in said amount.

4. A copy of Bankers Real Estate Consultants, Inc. appraisal dated July 20, 1990, provides that the value of the security held by the RTC is $4,300,000.00. A copy of said appraisal is attached hereto as Exhibit "B" and incorporated herein by this reference.

5. This Motion is supported by the Memorandum of Points and Authorities attached hereto and incorporated herein by this reference.

WHEREFORE, Debtor respectfully requests this Court to determine the value of the subject real property

is $4,300,000.00 and for such other and further relief as this Court deems appropriate under the circumstances.

Respectfully submitted this 19th day of October, 1990.

DAVIS & LOWE, P.C.

By: /s/ Ilene J. Lashinsky
Edward E. Davis, Esq.
Ilene J. Lashinsky, Esq.
234 North Central, Ste 722
Phoenix, AZ 85004
Attorneys for
Ambanc La Mesa
Limited Partnership

MEMORANDUM OF POINTS AND AUTHORITIES

Bankruptcy Rule 3012 provides as follows:

> "Valuation of Security. The Court may determine the value of a claim secured by a lien on property in which the estate has an interest on motion of any party in interest and after a hearing on notice to the holder of the secured claim and any other entity as the Court may direct".

The value of the security of the secured creditor should be determined pursuant to 11 U.S.C. §506(a). Section 506(a) provides, in pertinent part:

> "[S]uch value shall be determined in light of the purpose of the valuation and of the proposed disposition or use of such property, and in conjunction with any hearing on such disposition or use or on a plan effecting such creditor's interest".

Western has utilized in its Motion for Relief from Automatic Stay a prior appraisal in the sum of $5,000,000.00. Debtor believes that the recent appraisal, attached hereto as Exhibit "B" prepared by Bankers Consultants more accurately depicts the value of the property and places the issue of valuation squarely before the Court as ripe for determination. The issue of valuation is absolutely essential for plan purposes.

It has been said that the value of the subject property should be determined as of the date to which the valuation relates. For example, if the valuation is to determine the amount of a secured claim for the purposes of a Chapter 11 plan of reorganization, the value should be determined as of, or close to, the effective date of the plan. 3 *Colliers on Bankruptcy* (edition 15, 1990) ¶ 506.04 pages 506-537.

In the present situation, the appraisal relied on by the RTC is over 12 months old as its effective date was January 22, 1990. On the other hand the appraisal of Bankers Real Estate Consultants, Inc. was prepared recently with an effective date of July 20, 1990. It is anticipated that the plan of reorganization and disclosure statement will be filed within one or two weeks of the date of this motion and that the Bankers Real Estate Consultants, Inc. appraisal more closely approximates in time the effective date of the plan, which is currently anticipated as early 1991 and, therefore, more accurately depicts the value of the security and the secured claim of the RTC.

WHEREFORE, Debtor respectfully requests the Court to determine the value of the subject real property to be

$4,300,000.00 and for such other and further relief as this Court deems appropriate under the circumstances.

Respectfully submitted this 19th day of October, 1990.

DAVIS & LOWE, P.C.

By: /s/ Ilene J. Lashinsky
Edward E. Davis, Esq.
Ilene J. Lashinsky, Esq.
234 North Central, Ste 722
Phoenix, AZ 85004
Attorneys for
Ambanc La Mesa
Limited Partnership

A copy of the foregoing was delivered/mailed on 19th day of October, 1990, to:

U.S. Trustee
320 N. Central Ave.
Phoenix, AZ 85004

Sean P. O'Brien
Gust, Rosenfeld & Henderson
3300 Valley Bank Center
Phoenix, AZ 85073
Attorneys for RTC

/s/ Ilene J. Lashinsky